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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,870	03/21/2001	Philip A. Cole	01107.00108	8634

22907 7590 10/24/2005

BANNER & WITCOFF
1001 G STREET N W
SUITE 1100
WASHINGTON, DC 20001

EXAMINER

STEADMAN, DAVID J

ART UNIT

PAPER NUMBER

1656

DATE MAILED: 10/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/811,870	Applicant(s) COLE ET AL.	
	Examiner David J. Steadman	Art Unit 1656	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment. (See 37 CFR 1.116 and 41.33(a)).

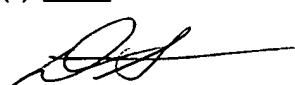
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE.
Claim(s) objected to: 15.
Claim(s) rejected: 1,5-7,10-13,58,60,63,67,69-71,74,87 and 88.
Claim(s) withdrawn from consideration: 77-86.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


David J. Steadman, Ph.D.
Primary Examiner
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ADVISORY ACTION

[1] The request for reconsideration in the response filed on 9/20/2005 has been considered, however the amendment does not place the application in condition for allowance. The amendment to the claims has not been entered because the claims as amended raise a new issue requiring further consideration. See MPEP § 714.13.

[2] Specifically, the claims have been amended to cancel all but claim 15 and to incorporate "compound 2" into claim 15. However, it is noted that the compound of claim 15 shows a distance of 5.7 Angstroms between a phosphorous atom and a nitrogen atom. It is unclear as to whether or not this distance is meant to be a limitation in the claim. For example, must the distance between these atoms remain at 5.7 Angstroms, or can the molecule rotate such that the distance may be greater or less than 5.7 Angstroms? For this reason, the amendment requires further consideration and a new rejection under 35 U.S.C. 112, second paragraph. While it is acknowledged that the examiner requested that "applicants incorporate the structure of 'Compound 2' as shown in Figure 1A into the claim," the examiner did not request that applicants show the 5.7 Angstrom distance between the nitrogen and phosphorous atoms.

[3] Applicants' arguments in the amendment filed on 9/20/2005 have been fully considered. However, in view of the non-entry of the amendment, applicants' arguments are not found persuasive to overcome the outstanding rejection(s) as set forth in the Office action mailed 5/18/2005 for the reasons of record stated therein.

[4] If the amendment filed on 9/20/2005 were entered, all rejections as set forth in the Office action mailed on 5/18/2005 would appear to be overcome. It should also be

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noted that, if the amendment were entered, it would not satisfy the requirements for sequence compliance because the sequences of R1 and R2, which represent amino acid sequences of at least 4 amino acids, should be identified by proper sequence identifiers, i.e., "SEQ ID NO:" (see MPEP 2422.01). If the sequences of R1 and R2 as recited in claim 15 have not been listed in the computer readable form and paper copy of the sequence listing, applicant must provide an initial computer readable form (CRF) copy of the "Sequence Listing", an initial paper copy of the "Sequence Listing", as well as an amendment directing its entry into the specification, and a statement that the content of the paper and CRF copies are the same and, where applicable, include no new matter as required by 37 C.F.R. 1.821(e) or 1.821(f) or 1.821(g) or 1.821(b) or 1.825(d).

[5] In view of the non-entry of the amendment, the claim status is as follows:

Claims 1, 5-7, 10-13, 15, 58, 60, 63, 67, 69-71, 74, and 77-88 are pending.

Claims 77-86 are withdrawn.

Claims 1, 5-7, 10-13, 58, 60, 63, 67, 69-71, 74, and 87-88 are rejected.

Claim 15 is objected to, but otherwise appears to be in a condition for allowance.


No claim is in condition for allowance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Steadman whose telephone number is 571-272-0942. The examiner can normally be reached on Mon to Thurs, 6:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr can be reached on 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Steadman, Ph.D.
Primary Examiner
Art Unit 1656